



Submission

Compliance and Performance Review of the Workers Compensation Nominal Insurer Scheme

July 8, 2019

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Unions NSW welcomes the opportunity to make a submission to the *Compliance and Performance Review of the Workers Compensation Nominal Insurer Scheme*.

Unions NSW supports the submissions filed by our affiliate unions.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600 000 members. These unions represent a diverse range of workers from both blue and white-collar industries.

Unions NSW does not work directly with injured workers in the same way our affiliate unions do. We do not have the body of cases that our affiliate unions have. We meet regularly with affiliate unions and know that they struggle to support their members navigating the workers compensation system largely as a result of insurer behaviour. The feedback we regularly receive is in relation to the nominal insurer's complete disregard for the legislation that governs their actions. This has become a never-ending source of frustration for those representing injured workers and for the injured workers themselves who often fail to understand that insurers are seldom held to account for their blatant disregard of the law in which they operate.

Unions NSW understands that this Review is focused only on icare and EML. We would like to state that systemic problems also exist with self-insurers, specialised insurers and TMF. We are hopeful that the Review into icare & EML may prompt SIRA to look at the practises of other insurers operating within the workers compensation scheme, as we are confident any concerns raised about EML will not be unique to EML and will be found to be problems within the entire workers compensation scheme.

The objectives of the workers compensation system are set out in section 3 of the *Workplace Injury Management and Workers Compensation Act (1988)*. These are to:

- Secure worker health, safety and welfare while preventing work related injury.
- Provide prompt treatment and rehabilitation to assist injured workers to return to work.
- Provide income and treatment payments to injured workers and their families.
- Provide a fair, affordable and financially viable system.

- Ensure contributions by employers are commensurate with risks, taking into account strategies and performance in injury prevention, injury management and return to work.
- Deliver a fair and effective system.

The terms of Reference for the Review are:

- Assess nominal insurer compliance with the Market Practice & Premium Guidelines (MPPGs) and identify any unintended consequences, risks and priorities for improvement in SIRA regulation of the premiums of the nominal insurer.
- Identify the benefits and risks to the performance of the NSW workers compensation system arising from icare's implementation changes to the nominal insurer operating model and supporting digital platforms.
- Assess the nominal insurer's performance in relation to return to work outcomes, claims management (including guidance, support and services for workers, employers and health service providers), customer experience and data quality and reporting.

It is disappointing that the terms of reference prioritise the financial functioning of the scheme at the first instance and the effectiveness in managing claims and what it terms as 'customer experience' last. This does not align with the objectives of the workers compensation scheme as set out in the Act above. Injured workers barely rate a mention within the terms of reference, in fact they are not mentioned at all. Support & services for workers is referred to at the end of a list under claims management. The objectives of the Act place the injured worker as a priority of the scheme along with prevention of injuries to all workers. Financial performance is necessary for the scheme to continue to function, however it is appropriately placed below the needs of the injured worker. Unfortunately the terms of reference appropriately reflect the current priorities of the scheme. The injured worker sits at the bottom of the list, almost an afterthought. The financial outcomes sit at the top. Customer experience is most likely referring to employer experience, employer's being the customers of the scheme as they purchase compulsory insurance and naturally regularly demand through their representatives reductions in premiums. Any injured worker or injured worker's representative will very quickly find out that they sit at the bottom of a long list, almost an inconvenience to the primary function of profitability.

Injured workers very quickly come to understand they are very low in the scheme outcomes, despite the intentions of the legislation as reflected through the objectives.

Unions NSW previously suggested in our Submission to SIRA Guidelines of November 2018, ‘

Unions NSW notes that the third paragraph states:

SIRA intends to use the CAM Standards and improved Guidelines to hold insurers accountable for delivering high standards of service to workers and their families, carers, employers and other stakeholders (p.4)

SIRA’s primary statutory function is to regulate ‘compliance with the workers compensation scheme’ under s 23 (f) of the *State Insurance and Care Governance Act 2015*.

Much of the frustration and anxiety experienced by our members is as a result of breaches by insurers of their legislative requirements. Further frustrations are experienced when these breaches are not addressed by SIRA. Language in this context statement should reflect SIRA’s obligation under the *State Insurance and Care Governance Act 2015* to ensure legislative compliance by insurers.

Unions NSW suggests SIRA avoid ‘customer service’ based language and replace this with language that indicates SIRA will use the *CAM Standards and improved Guidelines* to ensure legislative compliance by insurers when dealing with workers and their families, carers, employers and other stakeholders.’

Unions NSW continues to recommend that SIRA dismantle the customer service language and approach in order to adhere to the objectives set out in the Act. The scheme is governed by legislation that is clear. The objectives of the Act are clear. The treatment and recovery of the injured worker is the priority of the objectives. Unions NSW would like to see injured workers treated promptly and returned to work promptly, but the system just does not do this.

The ‘all cases are possibly fraudulent cases’ approach currently in place is causing further damage. One case that I am aware of involved a supermarket employee who attempted suicide three weeks into her claim. Her injury was of a physical nature and due to the severity of her injury she very quickly became aware of the unlikelihood of a successful return to work. The probing by the

insurer, the questioning of her medical practitioner, and the aggressive nature of the process, quickly led to her developing a psychological injury which quickly resulted in her trying to end her life. As her solicitor explained, this is extremely common. Aside from the obvious problems with injured workers quickly becoming suicidal, the current approach is doing nothing to assist recovery. Treating all injured workers with suspicion and contempt will always result in the failure of the objectives of the Act.

Unions NSW recommends that icare/EML stop treating all injured workers with contempt and suspicion and only deny treatment where there is genuine cause to doubt the judgement of the nominated treating doctor (NTD). Where this is the case allow the medical fraternity to undertake suitable investigations as they would normally do in any instances of medical malpractice.

To allow often young and poorly trained case managers, who have undertaken no medical training at all, to make a medical assessment on an injured worker by questioning the treatment plan of the NTD is absurd and not at all cost effective. I have dealt with members in my previous role as a union official at the Independent Education Union who have seen countless specialists only to have the treatment of their initial specialist recommended supported. One member was sent to a Macquarie Street specialist for an independent medical assessment (IME). The specialist said words to the effect, I am sick of this insurer sending patients to me to question the recommendation of the NMD when these people should have been treated without delay on the initial recommendation. He naturally approved the recommended treatment provided by the NTD.

This Dr shopping has resulted in delays to the treatment of injured workers and additional costs to the scheme. Delays in treatment can also lead to further stress placed on the injury requiring additional treatment. Treatment must be quick and rarely disputed if costs are to be kept down and recovery rates improved.

Unions NSW opposes the practice of rewarding case managers for the number of claim denials and delays to treatment made. Workers are under significant stress, particularly in cities like Sydney where the cost of living is exorbitant, often unable to be met on a low or minimum wage income. Many workers are acutely aware of the many other workers who would quickly replace them if given the opportunity. Many workers are also engaged as casuals or on temporary contracts. This insecurity makes them particularly vulnerable. If

employers offer incentives that will provide workers with more money or greater job security, they will do what they can to meet these incentives. This includes denying claims and treatment to injured workers. This practice is perverse. Denying necessary medical treatment to an individual while rewarding the individual who has worked the system to deny this treatment. This is also a contradiction to the objectives of the Act and will do nothing to assist workers to return to work. An injured worker needs treatment quickly if they are to successfully return to work.

The current return to work rates are low. When the government first enacted major changes to the legislation in 2012 it did so with a view to increasing return to work rates. This has simply not happened for many of the reasons already raised. Mental health issues regularly arise when workers are in dispute with their insurer and many are very naïve and shocked when they realise that they are being treated like a criminal. This will often be the beginning of depression and anxiety in injured workers. The financial stress and the failure of the system to adequately compensate, also an objective of the scheme outlined in the Act, will increase the severity of mental illness. It has been stated that the word compensation should be removed from the scheme as the scheme no longer offers compensation. This is sometimes a result of changes to the legislation, however it begins with the denial of a claim.

An injured worker who has not received treatment immediately will often begin a long journey to recover from a potentially aggravated injury. This battle can also lead to mental health injuries and injured workers with mental health issues will always struggle to stay in work or find work.

Unions NSW is often contacted by these seriously injured workers who are struggling to find work and survive. These workers have often become so damaged from their experience with icare and EML they will never return to optimum mental health and will never be employable. For many the complex and also adversarial world of Centrelink is simply too difficult to navigate and engage with. These workers are extremely vulnerable and will most likely end up homeless and looking to charities for any type of support they can find. Surely this is not acceptable in a country as wealthy as ours.

Unions NSW like all of our affiliates, is also an employer and from time to time our workers have unfortunately experienced workplace injuries.

In engaging with icare/EML our own People & Culture team have found the process of dealing with an injury very frustrating.

Case manager are slow to return calls. In one instance we were shocked to hear of the number of cases an individual was dealing with. It was little wonder given the number of ongoing matters being dealt with by one individual that this individual was unable to keep up with customer expectations. Unions NSW is concerned that the workers within the system, particularly the frontline workers, do not have the adequate resources they require to effectively do their jobs. This would also explain the very high turn-over rate amongst case managers. Anyone who has dealt with a matter will know that case managers come and go. Often very quickly. Many seem very young and inexperienced and lack the necessary training to deal with what would be very stressful work.

Unions NSW recommends the Review look at the training provided to case managers and other front-line workers. In doing this the Review should also look to case manager loads and support provided to case managers to deal with highly stressful situations.